March 7, 2022

VIA EMAIL
nkraft@sfwmd.gov

Natalie Kraft
South Florida Water Management District

RE: Loxahatchee River Watershed Restoration Project Protection Rulemaking Comments on Rule Development Workshop #2

Dear Ms. Kraft,

The Southeast Florida Utility Council (SEFLUC) represents water utilities throughout South Florida which provides potable water to over 6 million people. SEFLUC's mission is to provide a communications, networking and support structure for member utilities to continue to provide superior-quality water supply and wastewater management services to its customers in a cost-effective manner. SEFLUC's member utilities each hold Water Use Permits issued by the South Florida Water Management District (District) which authorizes the use of water essential to serve our customers.

SEFLUC has reviewed the draft rule language recently released by the District in connection with the Loxahatchee River Watershed Restoration Project (LRWRP) in northern Palm Beach and southern Martin Counties. As discussed at the District's recent February 22, 2022 workshop, the purpose of the rulemaking is to adopt rules that allow the District to meet its obligations as the local sponsor for LRWRP, by assuring its federal partners that water necessary for restoration of the Loxahatchee River Watershed is not allocated for consumptive uses.

SEFLUC is concerned that the current draft rule language appears to go far beyond the narrow purpose of protecting water made available for the LRWRP because of new water use permitting requirements that would apply to water uses throughout the District, well outside the LRWRP area of influence.

More specifically, the current draft rule language proposes the addition of a new Section 3.7.2.E to the Applicant's Handbook, which creates a new criterion describing interreference with Aquifer Storage and Recovery (ASR) Uses. This new section defines interference as a withdrawal that causes "1) the transmittance of ASR waters away from the area of influence by changing or accelerating the flow velocity or flow direction; or 2) a change in the concentration of total dissolved solids."

SEFLUC has several significant concerns regarding this proposed provision. First, as stated above, the stated purpose of the LRWRP rulemaking is to assure that water made available by the LRWRP is protected, including the ASR component of the C-18W Reservoir in northern Palm Beach County. However, unlike the rest of the provisions of the LRWRP protection rulemaking which are limited geographically, the proposed revisions to AH Section 3.7 apply throughout the District. Given the seemingly narrow purpose of the LRWRP protection rulemaking, it is almost certain that many stakeholders that would be impacted by the changes to Section 3.7 are not aware of this new requirement, and therefore District-wide public participation and input has been suppressed. It is critical that all stakeholders throughout the District be given an opportunity to provide meaningful feedback on such a significant change to the District's water use permitting requirements. This is especially the case since the District has fast-tracked the development and adoption of the LRWRP protection rulemaking, indicating at the most recent workshop that there would only be a two-week period following the workshop for the public to submit comments, and that the District intends to bring the draft rules to its Governing Board for approval at its April 14, 2022 meeting.

If the District wishes to consider adopting a District-wide ASR interference standard, it should do so through a separate rulemaking where the implications of this change to water users District-wide can be evaluated. Indeed, a review of the rulemaking materials suggests that the District has only evaluated the impact of this rule on water users located in the immediate vicinity of the LRWRP. The rulemaking record is silent as to the impact of this rule to water users outside of the LRWRP area.

SEFLUC is also concerned that the proposed new requirements of AH Section 3.7.2.E are ambiguous and do not provide sufficient guidance as to what may be considered interference with an existing ASR system. As written, the draft rule language states that any "change" in flow velocity or direction or in the concentration of total dissolved solids for an existing ASR system amounts to interference with an existing legal use that would make a proposed use not permittable. Taken literally, this provision would limit any proposed use of water, since any withdrawal causes some theoretical "change" in the aquifer with regard to flow or water quality. This is particularly the case when numerical groundwater models are used to evaluate proposed water uses. As a result, applicants would be left to guess whether the proposed rule language truly applies to any "change" no matter how infinitesimal, or whether there is some unwritten threshold of "change" which may in fact be permittable. This approach would vest District staff with unbridled discretion to decide what amount of "change" is or is not permittable.

Notably, as currently written, even a <u>beneficial</u> change in flow velocity or direction or total dissolved solid concentration would be grounds for determining interference with an existing ASR system. For example, even a proposed use that caused a <u>reduction</u> in the concentration of total dissolved solids would amount to interference as the language is currently written. This is an absurd result that was obviously not considered by the authors of this rule provision.

Most significantly, a requirement based on unspecified "change" is contrary to the statutory requirement that the permitting standard requires "interference" with an existing legal use. As written, there is no connection between whether a "change" in flow velocity or direction, or a "change" in concentration of total dissolved solids would actually interfere with a given existing ASR water use. At the very least, any rule dealing with ASR interference should define the threshold at which a given change associated with a proposed water use amounts to "interference" with an existing ASR use. Only when such a standard is specified would the rule language be consistent with statutory requirements, and more importantly, allow the District and water users to appropriately evaluate whether a given water use will interfere with an existing ASR system.

Additionally, the proposed revision to AH Section 3.7.3 contains language ensuring that interference with an ASR system cannot be mitigated through replacement of the impacted equipment. This is inappropriate since a user would only be able to mitigate its impact by relocating wells or changing withdrawal sources.

The final unintended consequence of this draft rule would be to make it difficult to permit ASR systems in the future. AH Section 3.7.3.D currently provides that to obtain a water use permit for an ASR system, the applicant must provide reasonable assurance that the operation of a proposed ASR system will not render existing water uses unable to withdraw water consistent with the provisions of their permits. With the new language being proposed by the District, the permitting of an ASR system would render existing Floridan aquifer uses unable to withdraw their permitted use because upon renewal, the water users would be unable to demonstrate non-interference with the ASR use.

Given the above concerns, SEFLUC requests that the revisions of AH Section 3.7 of District-wide applicability be removed from the current LRWRP protection rulemaking, and that any future rulemaking regarding the interference standard take into account the concerns expressed herein. Thank you for your consideration of these comments. We look forward to continuing to work with District staff regarding these and other important issues.

Sincerely,

Ana T. Caveda

Ana T. Caveda
Vice-Chair, Southeast Florida Utility Council (SEFLUC)

cc: SEFLUC Members